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Mandated areas

Statements submitted by non-governmental organizations in consultative status with the Economic and Social Council

International Indian Treaty Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 30 and 31 of Economic and Social Council resolution 1996/31.

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1. As we approach the end of the International Decade of the World's Indigenous People in 2004, a sense of urgency has been expressed by some indigenous peoples, their representatives and organizations, as well as some States concerning the United Nations draft declaration on the rights of indigenous people and the apparent lack of progress of the open-ended intersessional working group created by the Commission on Human Rights under its resolution 1995/32.

2. We are told by some States that if the draft declaration is not approved by the intersessional working group and submitted to the Commission by the end of the Decade, the process of standard setting for indigenous peoples will end. Such warnings have gone hand in hand with pressure to accept amendments or changes that limit or diminish the rights of indigenous peoples currently recognized under international law.

3. In the name of "progress" we are asked to "compromise" or "negotiate" by accepting lesser standards for indigenous peoples on a declaration specifically intended to recognize their rights. The refusal by the vast majority of indigenous peoples in the working group to compromise our rights has been characterized as obstinate, unrealistic and/or obstructionist.

4. Indigenous peoples' organizations participating in this process and many more around the world have endorsed the current text of the Subcommission for the

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Promotion and Protection of Human Rights as representing the minimum standard required for the survival of indigenous peoples. Indigenous participants, the Chairman/Rapporteur and many of the States accept the current text as adopted by the Subcommission as the basis of our discussions. The working group agreed to consider and discuss proposals for changes that:

(a) Deviate as little as possible from the current text;

(b) Attempt to strengthen or clarify the current text;

(c) Uphold the fundamental principles of non-discrimination and racial equality.

5. While many States are making a sincere attempt to maintain those principles in our discussions, others continue to propose amendments that seek to undermine our most basic rights, effectively subjugating the rights of indigenous peoples to the vastly divergent and, in many cases, blatantly discriminatory "domestic" laws of States.

6. The recognition by States of indigenous human rights and fundamental freedoms after centuries of colonization and marginalization cannot be an easy process. It will take time. Participants in this process should not panic or despair or give up in frustration if the process takes longer than we all would hope.

7. Our most profound concerns extend not only to the time pressures being placed upon this process but also to the apparent lack of political will of a handful of States to accept indigenous peoples' human rights and fundamental freedoms already recognized by the United Nations, its subsidiary organs and treaty monitoring bodies. Those few States that participate with the working group on the declaration, since its inception, have consistently made proposals for changes in the Subcommission's draft that would diminish or impair indigenous peoples' human rights and fundamental freedoms without consideration of established international human rights law and the established international legal framework. Their approach is either to make up new and lesser rights than those enjoyed by other peoples, or to hold those rights hostage with the apparent purpose of diminishing other rights.

8. For example, the United States proposes to amend article 3, affirming the right of indigenous peoples to self-determination, to say that indigenous peoples have the right to "internal self-determination", a concept not found in international law. That same State agrees that the word "peoples" may be used without qualification in the declaration, but refuses to agree to use the word, even in the title of the declaration, until the declaration "further defines" our rights. It is those gambits and proposals that have delayed the process of drafting the declaration. Those gambits and proposals violate United Nations guidelines as established by the General Assembly in its resolution 41/120 on standard setting in the field of human rights.

9. Resolution 41/120 emphasizes the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the extensive network of international standards in the field of human rights established by United Nations bodies and specialized agencies.

10. In paragraph 2 of the resolution, the General Assembly urges Member States and United Nations bodies engaged in developing new international human rights

standards to give due consideration in this work to the established international legal framework.

11. The General Assembly, in paragraph 4, invites Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in the field of human rights; such instruments should, inter alia:

(a) Be consistent with the existing body of international human rights law;

(b) Be of fundamental character and derive from the inherent dignity and worth of the human person;

(c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;

(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;

(e) Attract broad international support.

12. The Human Rights Committee, the treaty monitoring body of the International Covenant on Civil and Political Rights, has recognized the right of indigenous peoples to self-determination, applying it to the indigenous peoples of Canada,[1] Mexico,[2] Norway[3] and Australia.[4]

13. Our collective rights to land, territories and natural resources have also been recognized by the Human Rights Committee under article 27 of the International Covenant on Civil and Political Rights under its complaints procedure,[5] as well as its General Comment 23. Given the primacy of the International Covenant, as declared by the General Assembly in its aforementioned resolution on standard setting, there should be no doubt of the recognition of the right of indigenous peoples to self-determination, as fully consistent with article 1 of the Covenant.

14. Worse, some States take the position that, as they are not parties to conventions, covenants or jurisprudence that recognize indigenous rights, they are not bound to recognize those rights in the declaration, since the standard does not apply to them. The General Assembly resolution requires that all States engaged in standard setting pay due consideration to established international law. It does not require that a State be previously bound by the standard in order to apply it in standard setting. A standard need not be consistent with domestic law under those guidelines. The requirement is that it be consistent with international law.

15. We would agree with the International Labour Organization (E/CN.4/1995/119) that any standard which may be adopted by the United Nations should not in any case be lower than those already recognized and accepted by the extensive United Nations network of international standards. We would also agree with the secretariat that the Subcommission draft declaration on the rights of indigenous peoples is fully consistent with established principles of international law.[6]

16. The warning of dire consequences should indigenous peoples refuse to accept a lesser standard in order to achieve the adoption of a declaration, any declaration, by the end of the Decade is belied by decisions of the Commission itself on time limitations on standard setting. We would direct the attention of the Permanent Forum to paragraph 60 of the annex to Commission on Human Rights decision 2000/109:

"60. In creating any standard-setting working group, the Commission should consider a specific time frame within which the group would be called upon to complete its task. This could vary, depending on the complexity of the issue and the nature of the instrument. However, in most instances, the established time frame should not in principle exceed five years. If, by the end of this time frame, the working group has not been able to achieve the desired result, the Commission should consider the following options:

"Extending the mandate;

"Providing for a period of reflection (such as one or two years); during this period, chairpersons should continue to consult widely and where possible provide the Commission with papers on an envisaged outcome;

"Examining the working methods of the particular working group (taking into account the format of the report, annexes to the report, chairperson's perception paper, etc.)."

17. Clearly, the end of the Decade, as the options provided for by the Commission decision indicate, does not mean the end of the declaration or the process. The Commission itself calls for less drastic outcomes, including extensions of time and periods of reflection. The Permanent Forum itself should take part in any eventuality and make appropriate recommendations to the Commission as to extensions of time and methods of work regarding the declaration, that it not be lost or compromised.

18. The International Indian Treaty Council would therefore strongly urge the Permanent Forum on Indigenous Issues to recommend to the Commission on Human Rights and its intersessional working group on the draft declaration, fully to apply the guidelines as set out by the General Assembly in its resolution 41/120 in the elaboration of the declaration on the rights of indigenous peoples. We further urge the Permanent Forum to recommend to the Commission and its working group on the draft declaration that any standard that it adopts not be lower than those already recognized by international law and the internationally established legal framework.

Notes

[1] CCPR/C/79/Add.105.

[2] Ibid., Add.109.

[3] Ibid., Add.112.

[4] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40* (A/55/40), vol. I, paras. 498-528.

[5] See e.g., Ominayak v. Canada, Communication No. 167/1984.

[6] Technical review of the United Nations draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2, para. 30). The secretariat has also done similar technical reviews of other important human rights instruments, such as the draft convention on the rights of the child (E/CN.4/1989/WG.1/CRP.1/Add.1), the draft international convention on the protection of all migrant workers and their families (A/C.3/45/WG.1/WP.1/Rev.1/Add.1) and the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities (E/CN.4/1991/WG.5/CRP.1).

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Statement submitted by non-governmental organizations in consultative status with the Economic and Social Council

Tebtebba Foundation

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 30 and 31 of Economic and Social Council resolution 1996/31.

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Introduction

1. The report of the Permanent Forum on Indigenous Issues on its first session[1] is highly appreciated, as it captured the recommendations put forth at the session by indigenous peoples and member States. We strongly endorse all the proposals outlined in that report. What needs to be done is to identify which activities should be prioritized and the time frames for their implementation. The present statement will present ideas on how to pursue the implementation of some of the recommendations in the report.

2. It will also report on some of the activities of the Tebtebba Foundation that directly relate to the proposals in the report. Some key recommendations that emerged from these activities and processes and the links between these and the recommendations set out and the programmes discussed in the report of the Forum on its first session will be elaborated on.[2]

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Sustainable development

3. At the second session of the Commission on Sustainable Development acting as the preparatory committee for the World Summit on Sustainable Development, the Indigenous Peoples' Caucus of the Commission on Sustainable Development presented a dialogue paper by indigenous peoples (E/CN.17/2002/PC.2/6/Add.3). This was supplemented by a document entitled "Bullet points of the indigenous peoples' dialogue paper for the World Summit on Sustainable Development" which highlighted the key messages. These documents laid down the framework of indigenous peoples' participation in the processes of the Summit.

4. The fourth session of the Commission on Sustainable Development acting as the preparatory committee for the World Summit on Sustainable Development, which was held in Bali, Indonesia, from 27 May to 7 June 2002, and the high-level ministerial segment, held from 5 to 7 June, featured the dynamic presence of indigenous peoples. We made our interventions on issues centred around governance, capacity-building, and partnership and presented a concluding statement that contained the Indigenous Peoples Political Declaration. This Declaration called for a world conference on indigenous peoples and sustainable development as a culmination to the International Decade of the World's Indigenous People and as a concrete follow-up to the Summit.

5. The Indigenous Peoples' International Summit on Sustainable Development was held in Kimberley, South Africa, from 20 to 24 August 2002 and participants proceeded therefrom to the World Summit on Sustainable Development in Johannesburg. More than 300 indigenous peoples coming from all parts of the world participated in the Kimberley Summit; a smaller number went on to Johannesburg. Tebtebba was tasked by the Indigenous Peoples' Coordinating Committee to raise funds and be the lead organizer. The main outcome was the Kimberley Declaration and the Indigenous Peoples' Implementation Plan.[3] These documents were officially submitted to the World Summit on Sustainable Development and they are also being submitted to the Forum at its second session. It was unfortunate that no member of the Forum was present at Kimberley.

6. At the Johannesburg Summit, we lobbied hard to ensure that our concerns were integrated into the Johannesburg Declaration on Sustainable Development[4] and the Plan of Implementation of the World Summit on Sustainable Development.[5] We managed to insert our sentence into the Johannesburg Declaration (contained in para. 25 thereof) which reads: "We reaffirm the vital role of the indigenous peoples in sustainable development." It should be noted that this is one of the few United Nations documents that came out of a world conference attended by most heads of States that used the letter *s* in *peoples* without any qualifications. At the closing plenary meeting, we presented our final statement, a summary of which is found in the report of the Summit.[6]

7. We recommend that the members of the Forum and secretariat analyse thoroughly the report of the World Summit on Sustainable Development and the Kimberley Declaration and Indigenous Peoples' Implementation Plan in order to identify policies and programme areas that should be monitored and coordinated by the Forum. We also ask that the Forum endorse the call for a world conference on indigenous peoples and sustainable development which can be jointly organized by the United Nations and indigenous peoples.

8. Tebtebba is organizing an indigenous peoples' preparatory meeting during the Kyoto Third World Water Forum which will be held in Kyoto, Shiga and Osaka, Japan, from 16 to 23 March 2003. We are co-organizing two round-table discussions, on indigenous peoples' water management systems, and on water and cultural diversity. A report thereon will be submitted to the Forum.

Data disaggregation and the Millennium Development Goals

9. The importance of disaggregating data on indigenous peoples cannot be overemphasized. This is the first step in establishing benchmarks and indicators. We are convinced that disaggregated statistics is a powerful tool for decision-making on polices and programmes. In Tebtebba, we started a disaggregation project in the Philippines and from this we will develop a tool kit for data disaggregation. We had prepared a joint proposal with the Third World Institute[7] which was submitted to the European Commission last year under its budget line B7-7010 for combating racism and xenophobia and discrimination against ethnic minorities and indigenous peoples. This project was on data disaggregation and the generation of an "indigenous peoples' watch" following the model of Social Watch. Unfortunately, it was not approved; hence, we need to seek other sources of support.

10. Data disaggregation will help to particularize the Millennium Development Goals for indigenous peoples. At the panel discussion that we organized with the United Nations Development Programme (UNDP) in Johannesburg on "Millennium Development Goals and indigenous peoples", it was stressed that serious efforts should be made to render the Millennium Development Goals appropriate for, and adapted to, indigenous peoples' realties. The various United Nations agencies, programmes and Member States can help jump-start and coordinate the process of disaggregation.

11. Tebtebba strongly endorses the proposal that the United Nations system produce a triennial report on the state of the world's indigenous peoples. This was a proposal that we presented at the first session of the Forum. In addition, we propose that member States also endeavour to produce their own national reports on the state of indigenous peoples which can feed into the global report. The process of producing these reports should ensure the effective participation of indigenous peoples.

Human rights

12. From 1 to 11 December 2002, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people undertook a mission in the Philippines. Tebtebba was the main organization organizing the mission, although the invitation was extended by the Government of the Philippines. The Special Rapporteur submitted a debriefing report to the Government which contained his main findings and recommendations. His report will be submitted to the Commission on Human Rights at its 2003 session in Geneva.

13. The mission specifically looked into the impacts of large-scale development projects on the human rights of indigenous peoples and on the administration of

justice. His report will be very relevant to all the proposals in the report of the Forum on its first session centred around economic, social and sustainable development.

14. We recommend that his reports on the Philippine and Guatemalan missions be studied seriously by the Forum. His reports can be used to inform future processes and debates centring around the issue of development, human rights and indigenous peoples. We further recommend that the practice of inviting the Special Rapporteur, started at the first session, be maintained.

15. The monitoring and regulation of transnational and national corporations operating in indigenous territories, and the role of international financial institutions and trade bodies like the World Trade Organization, are persistent issues among indigenous peoples. A common observation made is that more rights are offered to transnational corporations than to indigenous peoples. Mechanisms to ensure corporate accountability can be explored and developed further by the Forum. The relationship between globalization and the policies and programmes of international financial institutions, and the worsening impoverishment of indigenous peoples, should be a subject of further research and promote the development of policy proposals.

16. The principle and practice of free, prior and informed consent has also become a rights issue for indigenous peoples. Thus, the proposal to create a working group on this issue is a very important one. Tebtebba, together with other non-governmental organizations, held a workshop/seminar on this issue in February 2003 which investigated the legal basis of free, prior and informed consent in international and national laws and examined the various ways in which it is carried out. We have mapped out future processes to be undertaken jointly by Tebtebba and other indigenous organizations and non-governmental organizations, and the results of these will be fed into the working group whenever it is formed.

17. We are also currently engaged in a review of the World Bank's policies in respect of, and involvement with, extractive industries (oil, gas, minerals). Independent case studies by indigenous peoples affected by those industries' operations are being carried out in seven countries. We are also participating in the Extractive Industries Review (EIR) Asia-Pacific consultation which will be held from 24 to 29 March 2003. The case studies will be presented on 14 and 15 April 2003 in London. The resulting recommendations will be submitted to the Forum for its consideration.

18. There is serious concern among indigenous peoples that, despite the ending of the International Decade of the World's Indigenous People in 2004, there is still no certainty that a declaration on the rights of indigenous peoples will be adopted by Governments. The Forum at its second session should address this concern and allow some time in its schedule for a discussion thereof, if only on an informal basis.

Conclusion

19. Indigenous peoples are busy intervening in various processes extending from the global down to the local level. Since Forum members cannot be present in many of these processes, it is important that reports thereon be made available to them. In

this way, complementarity and the sharing of responsibilities will become a norm. The extensive proposals set forth in the report of the Forum on its first session need the utmost cooperation of indigenous peoples, member States and the United Nations system to ensure that they will be implemented. The coordinating role of the Forum will be crucial in all aspects of this process.

Notes

[1] *Official Records of the Economic and Social Council, 2002, Supplement No. 23* (E/2002/43/Rev.1)

[2] The present submission is a summarized version of a longer report. There will be limitations, therefore, on the extent to which we can elaborate and go into details. The details will be found in the longer report whose annexes contain the outcome documents.

[3] See annex 2 of the longer report.

[4] *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1), chap. I, resolution 1, annex.

[5] Ibid., resolution 2, annex.

[6] Ibid., chap. V, para. 5.

[7] This is the non-governmental organization that is responsible for producing the annual Social Watch reports.